IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1391 OF 2005.

Susheela Gala : Appellant.

versus

The Municipal Corporation of

Greater Bombay. : Respondent.

Mr.V.R.Tripathi for the appellant.

Mr.J.J.Xavier for the BMC.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. Heard the advocates for the appellant and respondent. Appellant filed a suit challenging the notice under section 351 of the BMC Act. That suit was dismissed earlier. Written statement was not filed by the BMC. Then the matter was remanded with directions to the BMC to file written statement. The BMC did not file the

written statement. Therefore, according to the appellant, if the BMC did not file written statement on two occasions in spite of being given an opportunity, then the case of the plaintiff should have been accepted.

2. Secondly, according to the Mr.Tripathi, the learned counsel for the appellant, the plaintiff had produced documents. The structure for which the notice was given was 88 sq.ft. whereas actually the structure is 245 sq.ft. In the plaint the plaintiff has given history as to how she became the owner of the property. The copies of the documents, tendered before the trial Court, have been annexed along with this appeal. Those documents are in the form of receipt with reference to a garage at Rose Niwas. Another receipt is in respect of a garage in the compound of the Rose Niwas Co-operative Housing Society Ltd. Both the receipts are issued by different persons. Another document is the Assessment Bill (Exhibit D). It is in the name of Shri Haji Abubakar Jusab. None of all these documents show and can be construed as the document of title of the plaintiff. If the notice under section 351 of the BMC Act is in

respect of the structure admeasuring 88 sq.ft and the structure is actually 245 sq.ft. then admittedly, the documents are not with reference to the structure about which the notice was given, even other documents i.e. Receipt of 1994 (Exhibit E) and the ration card (Exhibit F) also. The ration card is about the residence. The property, as described, is a garage. The case of the plaintiff is totally bogus. It was rightly rejected. Hence no interference is called. The appeal is dismissed.

[D.G.DESHPANDE]